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Subpart A—General Provisions

§ 166.1 Purpose and organization.

(a) *Purpose and scope.* Section 18 of the Act authorizes the Administrator to exempt State and Federal agencies from any provision of the Act, if he determines that emergency conditions exist which require an exemption. The regulations in this part establish procedures whereby the Administrator may exempt a Federal or State agency from the provisions of the Act which regulate the manner in which a pesticide is made available for use or is used.

(b) *Organization.* (1) The provisions in subpart A of this part describe the four types of emergency exemptions authorized by the Agency and define terms used in this part.

(2) Subpart B of this part establishes procedures and criteria for specific, quarantine, and public health exemptions.

(3) Subpart C of this part establishes procedures and criteria for crisis exemptions.

§ 166.2 Types of exemptions.

There are four types of emergency exemptions which may be authorized: specific, quarantine, public health, and crisis exemptions.

(a) *Specific exemption.* A specific exemption may be authorized in an emergency condition to avert:

(1) A significant economic loss; or

(2) A significant risk to:

(i) Endangered species,

(ii) Threatened species,

(iii) Beneficial organisms, or

(iv) The environment.

(b) *Quarantine exemption.* A quarantine exemption may be authorized in an emergency condition to control the introduction or spread of any pest that is an invasive species, or is otherwise new to or not theretofore known to be widely prevalent or distributed within and throughout the United States and its territories.

(c) *Public health exemption.* A public health exemption may be authorized in an emergency condition to control a pest that will cause a significant risk to human health.

(d) *Crisis exemption.* A crisis exemption may be utilized in an emergency condition when the time from discovery of the emergency to the time when the pesticide use is needed is insufficient to allow for the authorization of a specific, quarantine, or public health exemption.

[51 FR 1902, Jan. 15, 1986, as amended at 71 FR 4510, Jan. 27, 2006]

§ 166.3 Definitions.

Terms used in this part have the same meaning as in the Act. In addition, as used in this part, the following terms shall apply:

Act means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

Agency and EPA mean the U. S. Environmental Protection Agency.

Beneficial organism means any pollinating insect, or any pest predator, parasite, pathogen or other biological control agent which functions naturally or as part of an integrated pest management program to control another pest.

Emergency condition means an urgent, non-routine situation that requires the use of a pesticide(s) and shall be deemed to exist when:

(1) No effective pesticides are available under the Act that have labeled uses registered for control of the pest

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under the conditions of the emergency; and

(2) No economically or environmentally feasible alternative practices which provide adequate control are available; and

(3) The situation:

(i) Involves the introduction or dissemination of an invasive species or a pesticide new to or not theretofore known to be widely prevalent or distributed within or throughout the United States and its territories; or

(ii) Will present significant risks to human health; or

(iii) Will present significant risks to threatened or endangered species, beneficial organisms, or the environment; or

(iv) Will cause significant economic loss due to:

(A) An outbreak or an expected outbreak of a pest; or

(B) A change in plant growth or development caused by unusual environmental conditions where such change can be rectified by the use of a pesticide(s).

First food use means the use of a pesticide on a food or in a manner which otherwise would be expected to result in residues in a food, if no tolerance or exemption from the requirements of a tolerance for residues of the pesticide on any food has been established for the pesticide under section 408 of the Federal Food, Drug, and Cosmetic Act.

Food means any article used for food or drink for man or animals.

Invasive species means, with respect to a particular ecosystem, any species that is not native to that ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health.

IR-4 means the Interregional Research Project No. 4, a cooperative effort of the state land grant universities, the U.S. Department of Agriculture and EPA, to address the chronic shortage of pest control options for minor crops, which are generally of too small an acreage to provide economic incentive for registration by the crop protection industry.

New chemical means an active ingredient not contained in any currently registered pesticide.

Significant economic loss means that, compared to the situation without the pest emergency and despite the best efforts of the affected persons, the emergency conditions at the specific use site identified in the application are reasonably expected to cause losses meeting any of the following criteria:

(1) For pest activity that primarily affects the current crop or other output, one or more of the following:

(i) Yield loss greater than or equal to 20%.

(ii) Economic loss, including revenue losses and cost increases, greater than or equal to 20% of gross revenues.

(iii) Economic loss, including revenue losses and cost increases greater than or equal to 50% of net revenues.

(2) For any pest activity where EPA determines that the criteria in paragraph (1) of this definition would not adequately describe the expected loss, substantial loss or impairment of capital assets, or a loss that would affect the long-term financial viability expected from the productive activity.

Special Review means any interim administrative review of the risks and benefits of the use of a pesticide conducted pursuant to the provisions of part 154 of this chapter, or §162.11 of this chapter prior to November 27, 1985, or any subsequent version of those rules.

Unreasonable adverse effects on the environment means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

[73 FR 75597, Dec. 12, 2008]

§ 166.7 User notification; advertising.

(a) A State or Federal agency that obtains an exemption may notify eligible users of the availability of the exempted pesticide(s) through user groups, retail dealers, and other means. Notification may include distributing copies of the section 18 approval letter, labeling, or other information to eligible persons.

(b) As set forth more fully in §168.22 of this chapter, EPA interprets FIFRA sections 12(a)(1) (A) and (B) as making it unlawful for any person who distributes, sells, offers for sale, holds for